



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100031/2020 (A)

**Preliminary Hearing Held by Telephone Conference Call
On 15 July 2020**

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Employment Judge M Robison

Ms R Scott

**Claimant
In person**

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PJGH Ltd t/a Papa Johns

**Respondent
Represented by
Mr M Haidar
Owner**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The judgment of the Employment Tribunal is that claimant's claims for sex discrimination and equal pay under the Equality Act 2010 are withdrawn and dismissed.
2. This case will proceed to be listed for a three day in person final hearing on the outstanding claims relating to unfair constructive dismissal, notice pay, failure to provide particulars of employment and the Working Time Regulations.

NOTE OF PRELIMINARY HEARING ON CASE MANAGEMENT ISSUES

1. At a case management preliminary hearing which took place by way of telephone conference call on 20 May 2020, the respondent was ordered to provide further details of their defence, and that was sent in by Mr Haidar by e-mail on 2 June 2020.
2. The claimant Miss Scott was required to lodge further details of her claim, which she did in an e-mail dated 10 June 2020. In that e-mail she stated that she was withdrawing the sex discrimination part of her equal pay claim, but claiming that she was entitled to “the same equal pay for work of equal value” as two other managers, one of whom is female.
3. As it was not clear to me what the claimant intended by that statement, I ordered this case management preliminary hearing by telephone conference call to be listed. Parties were advised that the issue for consideration at this case management preliminary hearing was:
 1. whether the claimant intends to pursue her claim for sex discrimination;
 2. whether the claimant intends to pursue an equal pay claim based on undertaking “like work” with named comparator(s) (i.e. whether the jobs of the claimant and a male comparator are the same or broadly similar);
 3. and/or whether the claimant intends to pursue a claim of “equal pay for work of equal value” and which comparators she says her job was of equal value with (i.e. whether the jobs are different but the role and responsibilities are such that she should have got paid the same as a male comparator).
4. The claimant was invited to research the position so that she could confirm her intentions following further discussion at this telephone hearing.
5. At the outset of the call, the claimant advised that having looked into the matter she had decided that she would withdraw her claim for sex discrimination and equal pay. These claims are accordingly dismissed.
6. I explained that the case will now be listed for a final hearing, as set out in the preliminary note of 20 May, as the position has not changed since that time and this case is not deemed suitable for a remote hearing.

7. The Tribunal will therefore proceed to consider the claimant's claims of unfair constructive dismissal, for notice pay, for failure to provide written particulars and for breaches of the Working Time Regulations at that final hearing on dates to be appointed.
- 5 8. Mr Haidar re-iterated that it is his position that the claimant was not employed but rather he was self employed. He thought that the position with regard to any benefits claimed by the claimant would confirm the position, but Ms Scott said that she had claimed benefits before but not during her time working for the respondent.
- 10 9. I now realise that Mr Haidar was referencing the orders issued by the Tribunal at the preliminary hearing on 20 May (a copy of which are annexed to this judgment for ease of reference). For the avoidance of doubt, the reference there to the requirement for Miss Scott to lodge information about benefits claimed relates to the position after she was dismissed.
- 15 10. I explained to Mr Haider, and this applies to Miss Scott, that these were matters which were disputed, and will require to be decided by the Tribunal, and could not be decided at this telephone hearing. I explained to Mr Haidar that he will require to send in all documentation which he says proves that Miss Scott was self-employed. These documents will require to be sent in to
20 the Tribunal 28 days before the dates listed for the final hearing, as set out in the orders issued on 20 May, a copy of which is attached for ease of reference. Miss Scott will also require to send in all of the documents which she intends to rely on, as directed in the Tribunal orders dated 20 May 2020.
- 25 11. This case should now be listed for a three day in person final hearing before a judge sitting alone.
12. Unfortunately in person hearings are not yet being listed in light of the Presidential Direction on the Covid-19 Pandemic, but parties should expect to receive a notice of hearing as soon as it is possible for these to be issued.

30 Employment Judge: Muriel Robison
Date of Judgment: 15 July 2020
Entered in register: 21 July 2020
and copied to parties

ORDERS ISSUED 20 MAY 2020

5 Under Rule 29 of the Employment Tribunals Rules of Procedure 2013, the following case management orders are issued for the purpose of the final hearing in the above proceedings:-

- 10 1. The respondent will provide to the claimant within 14 days of this case management preliminary hearing further details of their defence to the claim, that is by 3 June 2020.
- 15 2. No later than 28 days prior to the final hearing, the parties shall provide copies to each other of any documents upon which they intend to rely.
3. Each party shall prepare a set of documents, in chronological order and with numbered pages, incorporating all documentary productions intended to be referred to at the hearing, and shall bring to the hearing the required number of copies as indicated in the Notice of Hearing.
- 20 4. The claimant shall send to the respondent, copied to the tribunal, within the next 21 days, (by 10 June 2020 at the latest), a written statement with supporting documentation setting out:-
 - 25 (a) what the claimant seeks by way of remedy if the claim succeeds.
 - (b) if the claimant seeks the remedy of compensation, how much is sought in respect of each complaint with a detailed explanation of how each sum is calculated;
 - (c) details of any benefits received;
 - (d) a summary of jobs applied for, details of any interviews attended or jobs obtained and details of any income whether from temporary, casual or permanent employment or self-employed work;
 - (e) details of any other efforts made by the claimant to minimise her loss
- 30 5. The claimant shall provide to the respondent, with a copy to the tribunal, no later than 7 days before the final hearing, an updated written statement of the calculation of the sum claimed (together with copies of supporting documentation).

35 **Notes:**

- 40 (1) You may make an application under Rule 29 for this Order to be varied, suspended or set aside. Your application should set out the reason why you say that the Order should be varied, suspended or set aside. **You must confirm when making the application that you have copied it to the other party(ies) and notified them that they should provide the Tribunal with any objections to the application as soon as possible.**
- (2) If this order is not complied with, the Tribunal may make an Order under Rule 76(2) for expenses or preparation time against the party in default.
- (3) If this order is not complied with, the Tribunal may strike out the whole or part of the claim or response under Rule 37.